REMARKS

This Application has been carefully reviewed in light of the final Office Action mailed June 29, 2006 (the "Office Action"). At the time of the Office Action, Claims 1, 3-20, 22-39, and 41-60 were pending in the Application. In order to advance prosecution of this case, Applicants have amended Claims 9, 14, 28, 33, 47, 52 and 99. Applicants respectfully submit that no new matter has been added. Applicants respectfully request reconsideration and favorable action in this case.

Section 103 Rejections

The Office Action rejects Claims 1, 3-20, 22-39, and 41-60 under U.S.C. § 103(a) as being unpatentable by U.S. Patent Publication No. 2001/0014095 issued to Kawahata et al. ("*Kawahata*") in view of U.S. Patent No. 6,745,043 issued to Lester et al. ("*Lester*"). Applicants respectfully traverse these rejections for the reasons discussed below.

The M.P.E.P. states that "[t]o establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." *M.P.E.P.* §2143.03 (citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970); and *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed.Cir. 1988)). "Distilling an invention down to the 'gist' or 'thrust' of an invention disregards the requirement of analyzing the subject matter 'as a whole.'" *M.P.E.P.* § 2141.02(II) (citing *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984); and *Bausch & Lomb v. Barnes-Hind/Hydrocurve, Inc.*, 796 F.2d 443, 447-49, 230 USPQ 416, 419-20 (Fed. Cir. 1986), *cert. denied*, 484 U.S. 823 (1987)).

Claim 1 recites generating a priority certificate based on a determined priority and attaching the priority certificate to the communication packets of a connection. Claims 20 and 39 recite similar elements. The Office Action correctly states that *Kawahata* does not teach using a priority certificate. *Office Action*, page 2. The Office Action then asserts that *Lester* teaches using a priority certificate at member 28 of Figure 2 of *Lester* and at an identifier in column 3, lines 64+ and column 4, lines 48+. *Office Action*, page 2. In response to previous arguments made by the Applicant, the Office Action asserts that "the identifier

mentioned in col 3 lines 64+ of [Lester] for prioritizing the communication signal is said, in another embodiment (see col 4 lines 36+) to comprise an identification tag that is used to establish priority." *Office Action*, page 5.

Lester discloses "a switching system that includes a programmable priority communication list. . . . The switching system receives a communication signal that includes a signal identifier. A priority rating based on a comparison of the signal identifier to the priority communication list is assigned to the received communication signal." *Lester*, column 1, lines 59-63. *See also Lester*, column 3, line 66 to column 4, line 8; and Figure 2. The signal identifier disclosed by *Lester* contains information, such as a destination phone numbered (column 4, lines 12-13), an entered password (column 4, lines 27-38), an identification tag specific to the communication device (column 4, lines 35-37), whether the signal was initiated by a peripheral or individual communication device (column 4, lines 42-45) or some combination of the above (column 4, lines 48-50), that identifies the communication signal.

Nowhere does *Lester* disclose, teach or suggest generating a priority certificate based on a determined priority and attaching the priority certificate to the communication packets of a connection. The signal identifier disclosed by *Lester*, whether called an identification tag or not, is part of the communication signal that is received by the switching device. *See e.g., Lester*, column 3, lines 61-62. Only after the switching device has received the communication signal and its included signal identifier, is the switching device able to determine the priority. *Lester*, column 3, line 66 to column 4, line 8. Therefore, *Lester* does not disclose generating a priority certificate based on a determined priority. Thus, for at least these reasons Applicants respectfully request that the rejection of Claims 1, 20, and 39 be withdrawn.

It is noted in the M.P.E.P that "[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination." *M.P.E.P.* §2143.01(III) (citing *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). A prior art reference must be considered in its entirety, including portions that would lead away from the claimed invention. *M.P.E.P.* §2141.02. "To support the conclusion that the claimed invention is directed to obvious

subject, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." *M.P.E.P.* § 706.02(j) (quoting *Ex parte Clapp*, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. & Inter. 1985)).

The Office Action has not demonstrated that *Lester* and *Kawahata* expressly or impliedly suggest generating a priority certificate based on a determined priority and attaching the priority certificate to the communication packets; nor does the reasoning provided in the Office Action support a conclusion that the claimed invention is obvious in light of the teachings of the references. More specifically, the Office Action contends that "[i]t would have been obvious to one of ordinary skill in the art at the time of the invention to have used a priority certificate in Kawahata et al (in place of TOS info) in view of the teachings of Lester in order to promote more efficient processing." *Office Action*, page 2.

Examining *Lester* and *Kawahata* in their entirety it can be seen that the combination would not promote efficient processing and would lead one away from combining the two references. As discussed above *Lester* teaches that a switching device will receive a communication signal that "comprises a signal identifier 28 and a message." *Lester*, column 3, lines 58-63. The signal identifier comprises information such as a phone number, password, or identification tag that may be used in prioritizing the communication signal by comparing it to a priority communication list. *Lester*, column 3, lines 63-67 and column 4, lines 12-37. *Kawahata* discloses a router or exchange receiving a dial number of a terminal from a call-out terminal which is examined to "decide[] whether or not the received dial number is a priority control special number." *Kawahata*, paragraphs 46-49. Upon determining the priority of the dial number, *Kawahata* discloses editing portions of the message. *See e.g. Kawahata*, FIG. 12, boxes 2, 4, 14, 23 and 28. The TOS field is one such portion that may be edited. For example, *Kawahata* discloses that a service type corresponding to the priority class "high priority" may be stored in the TOS field. *Kawahata*, paragraph 136.

Combining *Lester* and *Kawahata*, as suggested by the Office Action, would lead to the priority class stored in the TOS field being replaced with a signal identifier. This means

that the router in *Kawahata* would examine the dial number to determine its priority. Then, instead of storing the priority information in the TOS field, the router would store a signal identifier that can be used to determine priority. In essence, the combination proposed by the Office Action discloses a router that uses one set of information to determine priority and then upon determining priority it stores a second set of information that also can be used to determine priority in the TOS field of the communication. Creating redundant work does not improve processing efficiency. Furthermore, Applicants note that merely stating that it would have been obvious to use a priority certificate is not a convincing line of reasoning to show generating a priority certificate and attaching the priority certificate to a communication packet. For at least these additional reasons Applicants respectfully request that the rejection of Claims 1, 20, and 39 be withdrawn.

Claims 3-19 depend either directly or indirectly from Claim 1, Claims 22-38 depend either directly or indirectly from Claim 20 and Claims 41-57 depend either directly or indirectly from Claim 39. Therefore, for at least the reasons sets forth above with respect to Claims 1, 20 and 39, Applicants respectfully request that the rejection of Claims 3-19, 22-38 and 41-57 be withdrawn.

Claim 8 recites notifying network users of a need to make resources available for a high-priority connection. Claims 27 and 46 recite a similar element. With respect to Claim 8 the Office Action states:

> Kawahata et al teaches the invention as discussed above, but does not explicitly teach notifying the other users of a need to make resources available for a high priority connection. However this would have been obvious to one of ordinary skill in the art at the time of the invention in order to be able to maintain the quality of connections for high priority calls, such as the emergency call mentioned in Kawahata et al.

Office Action, page 3. *Kawahata* discloses that if there is congestion along a communication path, the router or exchange, at which the congestion was detected, "extracts a service type of the voice packet received by itself and executes a processing . . . for eleminating the congestion." *Kawahata*, paragraph 105. This involves preferentially transmitting a high priority class communication while discarding or suppressing a low priority class communication. *Kawahata*, paragraph 105. *Kawahata* further discloses that "if the dialed dial number is a number for an emergency communication destination, even if a congestion

is generated on the IP network 16, it is prevented that the quality of a voice related to a communication deteriorate." *Kawahata*, paragraph 138. *Kawahata* discloses that lower priority packets are discarded or suppressed and that higher priority communications are completed without deterioration. In such a situation it would not be obvious to notify network users of the need to make resources available because the router at which the congestion has occurred will send the higher priority communications preferentially. More specifically, once the lower priority packets have been suppressed and the higher priority communications have been preferentially sent the needed resources have already been made available. Therefore, the router does not need to notify the lower priority communications of the need to free up resources (the resources have already been freed up) "in order to be able to maintain the quality of connections for high priority calls." (*Office Action*, page 3). Furthermore, notifying network users of a need to make resources available once the router has become congested would only increase the amount of congestion by increasing the number/amount of packets to be sent out. Thus, it would not have been obvious for *Kawahata* to notify users "in order to be able to maintain the quality of connections" as suggested by the Office Action. Therefore, for at least these additional reasons Applicants respectfully request that the rejection of Claims 8, 27 and 46 be withdrawn.

Claim 9 recites determining whether adequate resources are available for the connection to maintain a first quality of service level, and if not, pre-empting other connections to free up resources for the connection. Claims 28, 47, and 59 recite similar elements. The Office Action states that "[w]ith regard to claim 9, see col 9 lines 13+ where it is stated that 'a pre-termination notification signal is generated on the lower priority communication link in order to notify end users that the communication link will be terminated shortly thereafter.'" *Office Action*, page 3. Applicants note that column 9 of *Lester* does not contain 13 lines, Applicants therefore assume that the Office Action intended to cite to column 5 lines 13+. Generating a notification signal to notify users that their link is about to be terminated does not disclose, teach or suggest determining whether adequate resources are available for the connection to maintain a first quality of service level. Furthermore, the preceding portion of column 5 of *Lester* discloses that the system looks for open communication channels. Looking for an open communication channel does not disclose, teach or suggest determining whether adequate resources are available for the

connection to <u>maintain a first quality of service level</u>. Furthermore, *Lester* does not contain any disclosure of maintaining a first quality of service level. *Kawahata* merely discloses moving higher priority packets to the front of the line if a component within the IP network becomes congested and thus does not determine if adequate resources are available for the connection to maintain a first quality of service level. *See e.g. Kawahata*, paragraph 105. Neither *Kawahata* nor *Lester* disclose, teach, or suggest determining whether adequate resources are available for the connection to maintain a first quality of service level. Therefore, Applicants request that the rejection of Claims 9, 28, 47, and 59 be withdrawn.

Claim 10 recites that freeing up resources comprises downgrading the quality of service parameters of the other connections. Claims 29, 48 and 60 recite similar elements. The Office Action contends that "the 'other' connection is 'downgraded' since it is disconnected." *Office Action*, page 3. However, the communication links disclosed in *Lester* are either open or not open. *Lester*, column 5, lines 3-6. This only allows for *Lester* to disconnect a connection which precludes downgrading the quality of service parameter of the other connections. Therefore, for at least this additional reason Applicants respectfully request that the rejection of Claims 10, 29, 48, and 60 be withdrawn.

Claim 14 recites that determining whether adequate resources are available comprises determining a path for the connection and determining whether adequate resources are available along the path. Claims 33 and 52 recite similar elements. Claim 15 recites that the method further comprises determining the resources required to establish the requested connection and provide the connection with priority to the needed resources. Claims 34 and 53 recite similar elements. With respect to both Claims 14 and 15 the Office Action contends that "adequate resources must be available on the lower link for the call to be connected." *Office Action*, page 4. With respect to Claim 14, applicants are not sure how this relates to determining a path for the connection and determining whether adequate resources are available long the path. As mentioned above, *Lester* merely discloses checking if there is an available communication channel and does not disclose checking whether adequate resources are available along the path. With respect to Claim 15, the Office Action's statement that "adequate resources must be available on the lower link for the call to be connected" (*Office Action*, page 4) assumes that all calls require the same quantity and

type of resource which is not always the case. Furthermore, the Office Action has not provided a basis for its rejection of the remaining elements of Claim 15. More specifically the Office Action has not provided any indication as to how "adequate resources must be available on the lower link for the call to be connected" (*Office Action*, page 4) discloses <u>determining</u> the resources required to establish a requested connection and <u>provide</u> the connection <u>with priority</u> to the needed resources. Therefore, for at least these additional reasons Applicants respectfully request that the rejection of Claims 14-15, 33-34, and 52-53 be withdrawn.

Claim 17 recites monitoring network resources to determine when sufficient resources are available to establish the requested connection. Claims 36 and 55 recite similar elements. The Office Action merely states that "[w]ith regard to claim 17, the lower priority connection is monitored to determine when available bandwidth becomes available." *Office Action*, page 4. Neither *Kawahata* nor *Lester* contain the term "bandwidth" nor does either reference disclose, teach or suggest monitoring network resources to determine when sufficient resources are available to establish the requested connection. *Lestor* discloses checking if the switching system has an available communication channel, not monitoring network resources. *Lestor*, column 5, lines 3-7, Abstract, and FIG 1. *Kawahata* discloses responding to congestion within the IP network, not establishing a requested connection. *See e.g., Kawahata*, paragraphs 138 and 150. Therefore, for at least these additional reasons Applicants respectfully request that the rejection of Claims 17, 36 and 35 be withdrawn.

According to the M.P.E.P.:

35 U.S.C. 103 authorizes a rejection where, to meet the claim, it is necessary to modify a single reference or to combine it with one or more other references. After indicating that the rejection is under 35 U.S.C. 103, the examiner should set forth in the Office action:
(A) the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate,
(B) the difference or differences in the claim over the applied reference(s),
(C) the proposed modification of the applied reference(s) necessary to arrive at the claimed subject matter, and
(D) an explanation why one of ordinary skill in the art at the time the invention was made would have been motivated to make the proposed modification.

M.P.E.P. § 706.02(j). With respect to Claims 3, 6, 15-16, 18-19, 22, 25, 34-35, 37-38, 41, 44, 53-54, 56-57, and 58 the Office Action fails to set forth sufficient explanation in support of the rejection under 35 USC 103. More specifically, with respect to Claim 3, the Office Action simply states "that the packets are processed based on the certificate (identifier)." *Office Action*, page 2. The Office Action does not provide any indication as to what is being relied on, what the proposed modification is, or what the motivation for the modification is. The Office Action has merely restated Claim 3 and inserted "(identifier)" at the end. To the extent the Office Action is relying on *Lester* and/or *Kawahata* Applicants point out that neither *Lester* nor *Kawahata* disclose generating a priority certificate (see above) and thus they can not disclose processing communication packets based on the priority certificate. With respect to Claim 6 the Office Action merely states that "it would be obvious to provide higher access to applications such as gateways, since they provide connection to other applications." *Office Action*, page 3. The Office Action has simply provided a description of what a gateway may be without any support or explanation for why it would be obvious to provide a communication packet with a higher priority to access gateway trunks relative to other connections. With respect to Claim 16 the Office Action merely states that "the 'currently established connection' is the lower priority connection." *Office Action*, page 4. The Office Action fails to provide any indication as to how this relates to the Claim 16, how it makes Claim 16 obvious, or provide any support for its assertion. With respect to Claims 18 and 19 the Office Action simply states that "end usage priority monitoring and modification would be obvious in view of the fact that the lower priority connections are made based on the types of users present at the end of the phone calls." *Office Action*, page 4 The Office Action provides nothing in support of the "fact" on which its obviousness conclusion is based. With respect to Claims 22, 25, 34-35, 37-38, 41, 44, 53-54, and 56-57 the Office Action relies on previous reasoning stating that it would have been obvious to have a means to carry out the methods above, and that it would have been obvious to implement the process above in software. *Office Action*, page 4. To the extent that Claims 22 and 41 are similar to Claim 3; that Claims 25 and 44 are similar to Claim 6; that Claims 34 and 53 are similar to Claim 15; that Claims 35 and 54 are similar to Claim 16; that Claims 37 and 56 are similar to Claim 18; and that Claims 38 and 57 are similar to Claim 19, Applicants repeat those reasons addressed above with respect to Claims 3, 6, 15-16 and 18-

19. For the reasons discussed above Applicants respectfully request the withdrawal of the rejection of Claims 3, 6, 15-16, 18-19, 22, 25, 34-35, 37-38, 41, 44, 53-54, and 56-57.
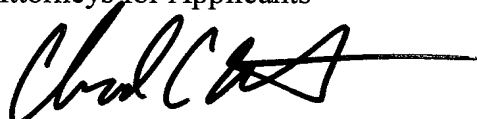
Conclusion

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Chad C. Walters, Attorney for Applicants, at the Examiner's convenience at (214) 953-6511.

The Commissioner is hereby authorized to charge any fee and credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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